

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA – CEDAR RAPIDS DIVISION

KEVIN WYMORE, Plaintiff, v.  CITY OF CEDAR RAPIDS, IOWA, and TIFFANY O'DONNELL, Mayor of the City of Cedar Rapids, Iowa, in her individual and official capacities. Defendants.	No. 1:22-CV-66  SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION
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**I. The term “identify as a person of color” is used interchangeably  
with “person of color.”**

The Court asked the parties to file a supplemental brief regarding *E.L by White v. Voluntary Interdistrict Choice Corporation*, 864 F.3d 932 (8th Cir. 2017). The case illustrates that discrimination by racial self-identification is legally indistinguishable from discrimination by race. *Id.* at 936 (“But Gateway’s policy also differentiates based on race: ‘If address is not found on the city site or the zip code is not listed above and the student identifies as African-American, you cannot enroll the student.’”) The Eighth Circuit did not pause to consider whether discriminating against a student because he “identifies as African-American” was anything other than discrimination because of race. Normal language usage properly joins the two concepts. See *Doe v. Blake School*, 310 F.Supp.3d 969, 973 (D.Minn. 2018) (“Blake stresses its commitment to pluralism,

noting that 30% of its students identify as students of color and 22% of its students receive financial aid...[a]ccording to Doe, however, only 1.7% of Blake's upper school students are African-American males.")

The city's claim that discrimination because of a person's racial self-identification is not race discrimination is plainly an after-the-fact rationalization of its policy.

Respectfully submitted,

/s/ Alan R. Ostergren

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